

the resulting partnership that is the divided partnership. Under paragraph (d)(3)(i)(A) of this section, partnership ABCD will be treated as following the assets-over form, with partnership ABCD contributing property Y to partnership AB<sup>2</sup> and property Z to partnership CD, and distributing the interests in such partnerships to the designated partners.

*Example 7.* (i) Partnership ABCDE owns Blackacre, Whiteacre, and Redacre, and divides into partnership AB, partnership CD, and partnership DE. Under paragraph (d)(1) of this section, partnership ABCDE is considered terminated (and, hence, none of the resulting partnerships are a continuation of the prior partnership) because none of the members of the new partnerships (partnership AB, partnership CD, and partnership DE) owned an interest of more than 50 percent in the capital and profits of partnership ABCDE.

(ii) Partnership ABCDE distributes Blackacre to A and B and titles Blackacre in the names of A and B. A and B then contribute Blackacre to partnership AB in exchange for interests in partnership AB. Partnership ABCDE will be treated as following the assets-up form described in paragraph (d)(3)(ii)(B) of this section for Federal income tax purposes.

(iii) Partnership ABCDE distributes Whiteacre to C and D and titles Whiteacre in the names of C and D. C and D then contribute Whiteacre to partnership CD in exchange for interests in partnership CD. Partnership ABCDE will be treated as following the assets-up form described in paragraph (d)(3)(ii)(B) of this section for Federal income tax purposes.

(iv) Partnership ABCDE does not liquidate under state law so that, in form, the assets in new partnership DE are not considered to have been transferred under state law. Partnership ABCDE will be treated as undertaking the assets-over form described in paragraph (d)(3)(i)(B) of this section for Federal income tax purposes with respect to the assets of partnership DE. Thus, partnership ABCDE will be treated as contributing Redacre to partnership DE in exchange for interests in partnership DE; and, immediately thereafter, partnership ABCDE will be treated as distributing interests in partnership DE to D and E in liquidation of their interests in partnership ABCDE. Partnership ABCDE then terminates.

(6) *Prescribed form not followed in certain circumstances.* If any transactions described in paragraph (d)(3) of this section are part of a larger series of transactions, and the substance of the larger series of transactions is inconsistent with following the form prescribed in such paragraph, the Commissioner may disregard such form, and

may recast the larger series of transactions in accordance with their substance.

(7) *Effective date.* This paragraph (d) is applicable to partnership divisions occurring on or after January 4, 2001. However, a partnership may apply paragraph (d) of this section to partnership divisions occurring on or after January 11, 2000.

[T.D. 6500, 25 FR 11814, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8717, 62 FR 25500, May 9, 1997; T.D. 8925, 65 FR 719, Jan. 4, 2001; 67 FR 57330, Sept. 10, 2002]

#### § 1.709-1 Treatment of organization and syndication costs.

(a) *General rule.* Except as provided in paragraph (b) of this section, no deduction shall be allowed under chapter 1 of the Code to a partnership or to any partner for any amounts paid or incurred, directly or indirectly, in partnership taxable years beginning after December 31, 1975, to organize a partnership, or to promote the sale of, or to sell, an interest in the partnership.

(b) *Election to amortize organizational expenses—(1) In general.* Under section 709(b), a partnership may elect to amortize organizational expenses as defined in section 709(b)(3) and § 1.709-2(a). In the taxable year in which a partnership begins business, an electing partnership may deduct an amount equal to the lesser of the amount of the organizational expenses of the partnership, or \$5,000 (reduced (but not below zero) by the amount by which the organizational expenses exceed \$50,000). The remainder of the organizational expenses is deductible ratably over the 180-month period beginning with the month in which the partnership begins business. All organizational expenses of the partnership are considered in determining whether the organizational expenses exceed \$50,000, including expenses incurred on or before October 22, 2004.

(2) *Time and manner of making election.* A partnership is deemed to have made an election under section 709(b) to amortize organizational expenses as defined in section 709(b)(3) and § 1.709-2(a) for the taxable year in which the partnership begins business. A partnership

may choose to forgo the deemed election by affirmatively electing to capitalize its organizational expenses on a timely filed Federal income tax return (including extensions) for the taxable year in which the partnership begins business. The election either to amortize organizational expenses under section 709(b) or to capitalize organizational expenses is irrevocable and applies to all organizational expenses of the partnership. A change in the characterization of an item as an organizational expense is a change in method of accounting to which sections 446 and 481(a) apply if the partnership treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the partnership begins business also is treated as a change in method of accounting if the partnership amortized organizational expenses for two or more taxable years.

(3) *Liquidation of partnership.* If there is a winding up and complete liquidation of the partnership prior to the end of the amortization period, the unamortized amount of organizational expenses is a partnership deduction in its final taxable year to the extent provided under section 165 (relating to losses). However, there is no partnership deduction with respect to its capitalized syndication expenses.

(4) *Examples.* The following examples illustrate the application of this section:

*Example 1. Expenditures of \$5,000 or less.* Partnership X, a calendar year taxpayer, incurs \$3,000 of organizational expenses after October 22, 2004, and begins business on July 1, 2011. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct the entire amount of the organizational expenses in 2011, the taxable year in which Partnership X begins business.

*Example 2. Expenditures of more than \$5,000 but less than or equal to \$50,000.* The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of \$41,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct \$5,000 and the portion of the remaining \$36,000 that is allocable to July through December of 2011 ( $\$36,000/180 \times 6 = \$1,200$ ) in 2011, the taxable year in which

Partnership X begins business. Partnership X may amortize the remaining \$34,800 ( $\$36,000 - \$1,200 = \$34,800$ ) ratably over the remaining 174 months.

*Example 3. Subsequent change in the characterization of an item.* The facts are the same as in *Example 2* except that Partnership X realizes in 2013 that Partnership X incurred \$10,000 for an additional organizational expense erroneously deducted in 2011 under section 162 as a business expense. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011, including the additional \$10,000 of organizational expenses. Partnership X is using an impermissible method of accounting for the additional \$10,000 of organizational expenses and must change its method under § 1.446-1(e) and the applicable general administrative procedures in effect in 2013.

*Example 4. Subsequent redetermination of year in which business begins.* The facts are the same as in *Example 2* except that, in 2012, Partnership X deducted the organizational expenses allocable to January through December of 2012 ( $\$36,000/180 \times 12 = \$2,400$ ). In addition, in 2013 it is determined that Partnership X actually began business in 2012. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2012. Partnership X impermissibly deducted organizational expenses in 2011, and incorrectly determined the amount of organizational expenses deducted in 2012. Therefore, Partnership X is using an impermissible method of accounting for the organizational expenses and must change its method under § 1.446-1(e) and the applicable general administrative procedures in effect in 2013.

*Example 5. Expenditures of more than \$50,000 but less than or equal to \$55,000.* The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of \$54,500. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct \$500 ( $\$5,000 - \$4,500$ ) and the portion of the remaining \$54,000 that is allocable to July through December of 2011 ( $\$54,000/180 \times 6 = \$1,800$ ) in 2011, the taxable year in which Partnership X begins business. Partnership X may amortize the remaining \$52,200 ( $\$54,000 - \$1,800 = \$52,200$ ) ratably over the remaining 174 months.

*Example 6. Expenditures of more than \$55,000.* The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of \$450,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct the amounts allocable to July through December of 2011 ( $\$450,000/180 \times 6 = \$15,000$ ) in 2011, the taxable

year in which Partnership X begins business. Partnership X may amortize the remaining \$435,000 (\$450,000 - \$15,000 = \$435,000) ratably over the remaining 174 months.

(5) *Effective/applicability date.* This section applies to organizational expenses paid or incurred after August 16, 2011. However, taxpayers may apply all the provisions of this section to organizational expenses paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under paragraph (b)(2) of this section is deemed made has not expired. For organizational expenses paid or incurred on or before September 8, 2008, taxpayers may instead apply § 1.709-1, as in effect prior to that date (§ 1.709-1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

[T.D. 7891, 48 FR 20048, May 4, 1983, as amended by T.D. 9411, 73 FR 38914, July 8, 2008; T.D. 9542, 76 FR 50890, Aug. 17, 2011; 76 FR 56973, Sept. 15, 2011]

#### § 1.709-2 Definitions.

(a) *Organizational expenses.* Section 709(b)(2) of the Internal Revenue Code defines organizational expenses as expenses which:

(1) Are incident to the creation of the partnership;

(2) Are chargeable to capital account; and

(3) Are of a character which, if expended incident to the creation of a partnership having an ascertainable life, would (but for section 709(a)) be amortized over such life.

An expenditure which fails to meet one or more of these three tests does not qualify as an organizational expense for purposes of section 709(b) and this section. To satisfy the statutory requirement described in paragraph (a)(1) of this section, the expense must be incurred during the period beginning at a point which is a reasonable time before the partnership begins business and ending with the date prescribed by law for filing the partnership return (determined without regard to any extensions of time) for the taxable year the partnership begins business. In addition, the expenses must be for creation of the partnership and not for operation or starting operation of the partnership trade or business. To satisfy

the statutory requirement described in paragraph (a)(3) of this section, the expense must be for an item of a nature normally expected to benefit the partnership throughout the entire life of the partnership. The following are examples of organizational expenses within the meaning of section 709 and this section: Legal fees for services incident to the organization of the partnership, such as negotiation and preparation of a partnership agreement; accounting fees for services incident to the organization of the partnership; and filing fees. The following are examples of expenses that are not organizational expenses within the meaning of section 709 and this section (regardless of how the partnership characterizes them): Expenses connected with acquiring assets for the partnership or transferring assets to the partnership; expenses connected with the admission or removal of partners other than at the time the partnership is first organized; expenses connected with a contract relating to the operation of the partnership trade or business (even where the contract is between the partnership and one of its members); and syndication expenses.

(b) *Syndication expenses.* Syndication expenses are expenses connected with the issuing and marketing of interests in the partnership. Examples of syndication expenses are brokerage fees; registration fees; legal fees of the underwriter or placement agent and the issuer (the general partner or the partnership) for securities advice and for advice pertaining to the adequacy of tax disclosures in the prospectus or placement memorandum for securities law purposes; accounting fees for preparation of representations to be included in the offering materials; and printing costs of the prospectus, placement memorandum, and other selling and promotional material. These expenses are not subject to the election under section 709(b) and must be capitalized.

(c) *Beginning business.* The determination of the date a partnership begins business for purposes of section 709 presents a question of fact that must be determined in each case in light of all the circumstances of the particular case. Ordinarily, a partnership begins